

**Congress of the United States**  
**Washington, DC 20515**

November 25, 2014

The Honorable Marilyn Tavenner  
Administrator  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
7500 Security Boulevard  
Baltimore, MD 21244

Dear Administrator Tavenner:

We write to request information on what steps, if any, the Centers for Medicare and Medicaid Services (CMS) has taken to reduce the possibility that illegal immigrants may have unlawfully enrolled in Medicaid because of Healthcare.gov's failure to properly screen applicant eligibility.<sup>1</sup> We are seeking information about enrollees in the first open enrollment period as well as the second, which began on November 15, 2014.

HHS has explicitly stated illegal immigrants or those with deferred status through the Deferred Action for Childhood Arrivals (DACA) program would not be eligible for Medicaid, the Children's Health Insurance Program (CHIP), or health insurance subsidies under PPACA.<sup>2</sup> However, poor oversight and insufficient eligibility verification systems related to Healthcare.gov appear to have provided opportunities for illegal immigrants to enroll in subsidized health insurance. A September announcement from CMS gives credence to this concern; the agency warned that up to 115,000 individuals enrolled in individual market plans purchased through Healthcare.gov had not responded to notices regarding citizenship and data-matching issues, and would lose coverage if they do not prove their citizenship or immigration status.<sup>3</sup>

In addition to CMS' own warnings about enrollees with questions surrounding immigration and citizenship status, our concerns are based on the work of the Government Accountability Office (GAO). Recently, GAO shared troubling findings from undercover testing of enrollment controls for health care coverage and subsidies to find evidence of citizenship and immigration verification failures.<sup>4</sup> After posing as fictitious applicants, and being directed to and subsequently submitting

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<sup>1</sup> See DEP'T OF HEALTH & HUMAN SERVICES, OFFICE OF INSPECTOR GEN., OEI-01-14-00180, MARKETPLACES FACED EARLY CHALLENGES RESOLVING INCONSISTENCIES WITH APPLICANT DATA 10-11 (2014), *available at* <https://oig.hhs.gov/oei/reports/oei-01-14-00180.pdf>.

<sup>2</sup> See Letter from Cindy Mann, Dir., Ctr. for Medicaid & CHIP Services, Dep't of Health & Human Services, to State Health Officials & Medicaid Directors (Aug. 28, 2012), *available at* <http://www.medicaid.gov/Federal-Policy-Guidance/Downloads/SHO-12-002.pdf>.

<sup>3</sup> See Press Release, Centers for Medicare & Medicaid Services, CMS update on consumers who have data matching issues (Sept. 15, 2014), *available at* <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Press-releases/2014-Press-releases-items/2014-09-15.html>.

<sup>4</sup> See *Hearing on the Integrity of the Affordable Care Act's Premium Tax Credit, Before the Subcomm. on Oversight of the H. Comm. on Ways and Means*, 113th Cong. 9-10 (2014) (statement of Seto J. Bagdoyan, Acting Dir., Forensic Audits & Investigative Serv., U.S. Gov't Accountability Office), *available at* [http://waysandmeans.house.gov/uploadedfiles/gao\\_report\\_7\\_22.pdf](http://waysandmeans.house.gov/uploadedfiles/gao_report_7_22.pdf).

supplementary counterfeit citizenship and immigration documentation, GAO investigators were informed that their citizenship and immigration status had been verified.<sup>5</sup>

We are concerned that the same failure to properly determine eligibility for PPACA plans is effectively being imported into Medicaid, thereby allowing illegal immigrants to enroll in this essential but already stretched-thin program. This dynamic is exacerbated because Healthcare.gov determines whether an individual is eligible for Medicaid in 31 states.<sup>6</sup> As demonstrated by GAO, these determinations are made by a verification system that may potentially allow an illegal immigrant who uses the documents of an eligible person to access the exchange, or receive a premium credit, cost sharing subsidy, or both.<sup>7</sup>

So that we may better understand the actions of CMS to address these vulnerabilities in Medicaid enrollment verification, please provide answers to the following questions:

1. What citizenship eligibility verification procedures are completed through Healthcare.gov before referring an individual applicant to Medicaid?
2. How do CMS contractors work with Healthcare.gov and the states to validate citizenship and Medicaid eligibility?
3. How many applicants whose citizenship or immigration statuses were unverified in the first enrollment year were referred to Medicaid by Healthcare.gov? Were state Medicaid programs informed that these applicants' citizenship or immigration statuses had not been verified? What, if any, citizenship verification procedures were states required to complete?
4. To date, how many applications to Healthcare.gov determined Medicaid-eligible were declined by the states due to illegal immigrant status?
5. If a state enrolls an illegal immigrant into Medicaid based on information received from Healthcare.gov, is CMS planning to compensate states for any state expenditures incurred on behalf of that ineligible individuals, since the error originated with CMS?
6. How are you working with the various Healthcare.gov and eligibility verification contractors to make sure illegal immigrants cannot enroll in Medicaid when using Healthcare.gov?
7. Please describe in detail CMS's process for reviewing states' compliance with the statutory requirement that individuals must be lawfully-present in the United States before receiving Medicaid benefits.

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<sup>5</sup> See *id.*

<sup>6</sup> See *State Decisions For Creating Health Insurance Marketplaces*, KAISER FAMILY FOUND., <http://kff.org/health-reform/state-indicator/state-decisions-for-creating-health-insurance-marketplaces/> (last visited Sept. 9, 2014); see *Health Insurance Marketplaces*, THE COMMONWEALTH FUND, <http://www.commonwealthfund.org/interactives-and-data/maps-and-data/state-exchange-map> (last visited Sept. 12, 2014) (New Mexico, Nevada, and Oregon's state-run marketplaces use the Federal website).

<sup>7</sup> See ALISON SISKIN & ERIKA K. LUNDER, CONG. RESEARCH SERV., R43561, TREATMENT OF NONCITIZENS UNDER THE AFFORDABLE CARE ACT 11-12 (2014), available at <http://www.crs.gov/pdfloader/R43561>.

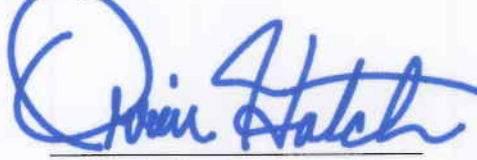


Thank you in advance for your attention to this request. Please answer each question individually and include the text of each question with your response. We request a response by December 12, 2014. Should your staff have any questions, please have your staff contact Josh Trent with the House Energy and Commerce Committee at (202) 225-2927, Kim Brandt with the Senate Finance Committee at (202) 224-4515, or Alicia Hennie with the Senate HELP Committee at (202) 224-6770.

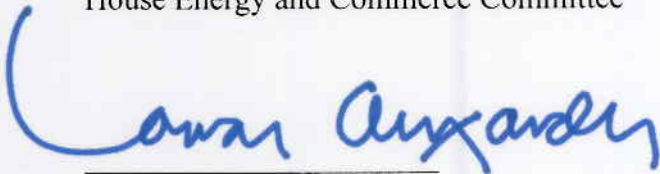
Sincerely,



Fred Upton  
Chairman  
House Energy and Commerce Committee



Orrin G. Hatch  
Ranking Member  
Senate Finance Committee



Lamar Alexander  
Ranking Member  
Senate Health, Education, Labor and Pensions Committee

CC: Cindy Mann, Director, Center for Medicaid and CHIP Services